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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re: Dawn Marie Mizenis, Debtor.	Chapter 7 CASE NO. 10-42061 JHW
FIA Card Services, N.A. (F.K.A. MBNA America Bank, N.A.) and Discover Bank, Issuer of the Discover Card, Plaintiffs, v. Dawn Marie Mizenis, Defendant.	Adv. Pro. No.

COMPLAINT TO DETERMINE DEBT
TO BE NON-DISCHARGEABLE

FIA Card Services, N.A. (F.K.A. MBNA America Bank, N.A.) and Discover Bank, Issuer of the Discover Card (collectively, "Plaintiffs"), by way of complaint against Dawn Marie Mizenis ("Debtor" or "Defendant"), allege:

JURISDICTION AND VENUE

1. Plaintiffs are financial institutions which do business in interstate commerce. Plaintiffs are in the business of making unsecured consumer loans.

2. On or about October 15, 2010, the Debtor filed a voluntary petition for relief under Chapter 7 of title 11 of the United States Code in the United States District Court for the District of New Jersey.

3. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I) and (O) to determine a debt to be nondischargeable.

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §1334(b).

5. This proceeding is properly venued in this district pursuant to 28 U.S.C. §1409.

6. The statutory predicates for the relief sought herein are 11 U.S.C. §§105 and 523(a)(2) as well as Rule 4007 of the Federal Rules of Bankruptcy Procedure.

FACTS APPLICABLE TO ALL COUNTS

7. Plaintiffs re-allege and incorporate by reference paragraphs 1 though 6, above, as if fully set forth herein.

8. FIA Card Services, N.A. (F.K.A. MBNA America Bank, N.A.) is the holder of a claim against Defendant arising from account number XXXXXXXXXXXX7440 ("FIA Card Services, N.A. (F.K.A. MBNA America Bank, N.A.)"). The outstanding balance on the FIA Card Services, N.A. (F.K.A. MBNA America Bank, N.A.) Account is $9,385.00.

9. Discover Bank, Issuer of the Discover Card is the holder of a claim against Defendant arising from account number XXXXXXXXXXXX9162 ("Discover Bank, Issuer of the Discover Card") (collectively "Accounts"). The outstanding balance on the Discover Bank, Issuer of the Discover Card, Account is $3,892.46.

10. Plaintiffs standard procedure in extending credit in this manner, whether an applicant requests or is offered credit, is for Plaintiffs' representative to gather information such as:

name, address, whether the Debtor's residence is owned or rented, monthly income, source of income, and social security number. Thereafter, Plaintiffs' representative runs a computerized credit check. If the applicant's income appears sufficient, the credit check shows nothing adversely affecting the application beyond Plaintiffs' normal limits, and if the applicant's other debts are not excessive, then Plaintiffs may extend the credit.

11. By obtaining and using the credit line available in the Account, Defendant represented to Plaintiffs that Defendant would repay all amounts utilized in accordance with the terms and conditions set forth in the account agreement.

12. Plaintiffs justifiably relied on the Defendant's false representations based in part upon the Defendant's status as a card member in good standing and that there were no “red flags” evident during the time period of charging activity.

13. Between September 13, 2010 and September 14, 2010 Defendant incurred $9,000.00 in cash advance and/or convenience check charges.$9,000.00 of these transactions were made within the presumption period utilizing the FIA Card Services, N.A. (F.K.A. MBNA America Bank, N.A.) Account.

14. As a result of the above activity, the account credit limit was nearly exhausted.

15. Between August 25, 2010 and September 24, 2010 Defendant incurred $2,213.00 in retail charges and $1,500.00 in cash advance and/or convenience check charges.$2,213.00 of these transactions were made within the presumption period utilizing the Discover Bank, Issuer of the Discover Card Account.

16. Defendant's Schedules I and J filed with Defendant's bankruptcy petition indicate that Defendant had household income after expenses that was insufficient to service Defendant's total unsecured debt on or about the date(s) the debt was incurred.

17. Therefore, Defendant was insolvent at the time of the cash advance, lacking an ability to repay the debt.
18. Because Defendant had no liquid cash or assets, the source of any payments made on the Accounts must have been other lines of credit.
19. Defendant had an intent to defraud Plaintiffs by accepting the benefits of the cash advances and/or purchases without intending to repay.
20. Defendant's actions constitute material misrepresentations of facts which were intended to be relied upon by Plaintiffs in extending credit to Defendant.
21. Plaintiffs, in fact, did rely upon Defendant's misrepresentations of repayment and were induced to lend money to Defendant by these misrepresentations.
22. Plaintiffs have been deprived of valuable assets due to Defendant's actions, which actions amount to actual fraud.
23. It has become necessary to employ counsel to represent the interests of Plaintiffs herein, and the account agreements specify that Defendant shall be liable for Plaintiff's reasonable attorney's fees in such an instance.

COUNT I
NON-DISCHARGEABILITY - 11 U.S.C. §523 (a)(2)(A)

24. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 23 as if fully set forth herein.
25. By reason of the foregoing, Defendant incurred debt without an intent to repay it, obtaining money from Plaintiffs through false pretense, false representations and/or actual fraud.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

A. Finding the debt owed by Defendant to FIA Card Services, N.A. (f.k.a. MBNA America Bank, N.A.) in the amount of $9,000.00 to be non-dischargeable pursuant to 11 U.S.C. § 523(a)(2);

B. Finding the debt owed by Defendant to Discover Bank, Issuer of the Discover Card in the amount of $3,713.00 to be non-dischargeable pursuant to 11 U.S.C. § 523(a)(2);

C. For attorneys fees, expenses, interest and costs of suit; and

D. For such other relief to Plaintiffs as this Court deems just and equitable.

Dated: January 25, 2011

WEINSTEIN & RILEY, P.S.
Attorneys for Plaintiffs

/s/ Kenneth S. Jannette
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